

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

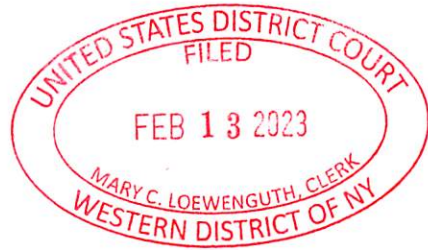
JOSEPH GENTILE,

Petitioner,

v.

SUPERINTENDENT LATONA and
NEW YORK STATE BOARD OF
PAROLE,

Respondents.



21-CV-1095 (JLS) (MJR)

DECISION AND ORDER

Petitioner Joseph Gentile commenced this proceeding on October 6, 2021, when he filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. Dkt. 1. Gentile's petition claims that he was granted "parole-release" by the New York State Board of Parole, but the superintendent of Collins Correctional Facility refused to release him to parole supervision. *See generally* Dkt. 1. On October 4, 2022, this Court referred the case to United States Judge Michael J. Roemer for all proceedings under 18 U.S.C. § 636(b)(1)(B) and (C). Dkt. 59.

Presently before the Court is Judge Roemer's Report and Recommendation ("R&R") (Dkt. 71) addressing Gentile's letter (Dkt. 67) requesting that he be permitted to withdraw his habeas petition and release his counsel of record.¹ Based

¹ As outlined more fully in Judge Roemer's R&R, the parties—including Petitioner's subsequently retained counsel Frank Bogulski—were litigating Respondents'

on the lack of objections from Respondents and Gentile, the R&R recommends that Gentile's request to withdraw should be accepted and the matter dismissed without prejudice. *See generally* Dkt. 71. Neither party filed objections to the R&R, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). It must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's R&R and the relevant record. The Court accepts and adopts Judge Roemer's recommendation to grant Gentile's motion to withdraw his habeas corpus petition and dismiss this action without prejudice.

motion to dismiss (Dkt. 38) for failure to exhaust when Gentile filed his letter. After receiving the letter, Judge Roemer issued a text order confirming receipt of Gentile's request and cautioning Gentile that discontinuation of the action could result in his being time-barred from pursuing further federal habeas corpus relief concerning this conviction. Dkt. 68. Judge Roemer provided a period of over thirty days for Gentile to notify the Court that he did not want to withdraw the petition. *Id.* No further communication from Gentile was received.

For the reasons stated above and in the R&R, Gentile's motion to withdraw the petition (Dk. 67) is granted. This action is dismissed without prejudice. The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: February 13, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE